

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHAN MURRAY,	§
	§ No. 634, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0304013717
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 2, 2009
Decided: February 18, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 18th day of February 2009, it appears to the Court that:

(1) On November 5, 2008, the appellant, Stephan Murray, was sentenced for a violation of probation (“VOP”). The record before us reflects that he was represented by counsel at the VOP hearing. Any appeal from his VOP sentence should have been filed on or before December 5, 2008. However, Murray, acting pro se, did not file his direct appeal in this Court until December 31, 2008.

(2) On January 7, 2009, the Clerk issued a notice to Murray to show cause why his appeal should not be dismissed as untimely filed. Murray filed a response to the notice to show cause on January 15, 2009. In

the response, he states, as he did in his notice of appeal, that he instructed his attorney to file an appeal, but that his attorney did not do so. The State filed a reply on February 2, 2009. In the reply, the State asserts only that it is unable to confirm if or when Murray received a copy of his sentencing order.

(3) In these circumstances, we conclude that this matter should be remanded to the Superior Court for a determination of whether Murray instructed his attorney to file an appeal.¹ If the Superior Court determines that Murray instructed his attorney to file an appeal, then its November 5, 2008 sentencing order should be vacated and Murray re-sentenced, with the assistance of counsel, so that a timely appeal might be filed.²

NOW, THEREFORE, IT IS ORDERED that this matter is hereby REMANDED to the Superior Court for further proceedings in accordance herewith. Jurisdiction is not retained.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹ *Roe v. Flores-Ortega*, 528 U.S. 470, 485 (2000).

² *Id.* at 478.